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10/527,433	10/17/2005	Hans-Jurgen Karnatz	2002P10529WOUS	5407

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Siemens Corporation
Intellectual Property Department
170 Wood Avenue South
Iselin, NJ 08830

EXAMINER

BHATIA, AJAY M

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/527,433	Applicant(s) KARNATZ ET AL.	
	Examiner AJAY BHATIA	Art Unit 2145	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-29 and 32-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-29 and 32-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

Applicant's arguments, see remarks, filed 8/11/2008, with respect to the rejection(s) of claim(s) 24-44 under 102 have been fully considered and are persuasive in light of the amendment to the claims. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Sandler-Tracton.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-29 and 32-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sandler (United States Patent 6,378,069) in view of Tracton et al. (United States Patent 6,470,378)

For claim 24, Sandler teaches, a data communication system for updating a software stored in a storage device of a first computer, comprising an administrative computer for updating the software; (Sandler, Col. 4 line 65 to Col. 5 line 10, download server)

an indicator indicating a plurality of transmission media available for updating software that is exchanged between the first computer and the administrative computer prior to the update; (Sandler, Col. 3 lines 5-15, initiation signal)

and a data connection operatively connecting the first computer and the administrative computer via the selected transmission medium adapted to transmit data between the computer and the administrative computer. (Sandler, Col. 6 lines 16-29, download server)

Sandler fails to clearly disclose, a control software to compare a respective data rate provided by respective one s of the plurality of transmission media available for updating software, the control software further configured to select one of the plurality of transmission media based on a result of the rate of the data rate comparison,

Tracton teaches, a control software to compare a respective data rate provided by respective one of the plurality of transmission media available for updating software, the control software further configured to select one of the plurality of transmission media based on a result of the rate of the data rate comparison, (Tracton, Col. 3 line 55-62, available resources, Col. 7 lines 1-10, determination on bandwidth)

Tracton and Sandler are both in the field of connecting to computers

Tracton and Sandler are compatible

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine Sandler and Tracton, because Tracton provides the advantage of providing the fast connection, for faster operation.

For claim 25, Sandler-Tracton teaches, the data communication system according to claim 24, wherein the indicator is exchanged over a predetermined transmission medium. (Sandler, Col. 4 lines 55-65, short message GSM)

For claim 26, Sandler-Tracton teaches, the data communication system according to claim 25, wherein the predetermined transmission medium is different from the transmission medium. (Sandler, Col. 6 lines 15-30, circuit switched)

For claim 27, Sandler-Tracton teaches, the data communication system according to claim 25, wherein the predetermined transmission medium is a telephone connection. (Sandler, Col. 6 lines 1-15, PSTN)

For claim 28, Sandler-Tracton teaches, the data communication system according to claim 24, wherein the transmission medium is an internet connection or a telephone connection. (Sandler, Col. 6 lines 1-15, internet)

For claim 29, Sandler-Tracton teaches, the data communication system according to claim 28, wherein the internet connection is fixed and an IP address assigned to the first computer is a fixed IP, or the internet connection is temporary and an IP address assigned to the first computer is a temporary IP address. (Sandler, Col. 5 lines 10-25, address of subscriber)

For claim 32, Sandler-Tracton teaches, the data communication system according to claim 24, wherein the control software indicates a time to perform the software update. (Sandler, Col. 7 lines 25-47, out of date, Col. 10 lines 46-56, delay time)

For claim 33, Sandler-Tracton teaches, the data communication system according to claim 24, wherein the control software indicates a call identification that is assigned to the additional first computer, the call identification selected from the group consisting of telephone number, internet protocol address, and uniform resource locator address. (Sandler, Col. 5 lines 11-25, network address)

For claim 34, Sandler-Tracton teaches, the data communication system according to claim 24, wherein a second transmission medium for exchanging data between the first computer and the additional first computer is conveyed via the control software. (Sandler, Col. 8 line 39 to Col. 9 line 11, in the contents)

For claim 35, Sandler-Tracton teaches, the data communication system according to claim 24, wherein the second transmission medium is the same as the predefined transmission medium. (Sandler, Col. 8 line 39 to Col. 9 line 11, PSTN)

For claim 36, Sandler-Tracton teaches, the data communication system according to claim 34, wherein the second transmission is different than the transmission medium

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and the predefined transmission medium. (Sandler, Col. 9 lines 13-17, alternative data call)

For claim 37, Sandler-Tracton teaches, the data communication system according to claim 34, wherein a file for updating software is stored on the additional server and wherein the file first computer is transmitted to the first computer over the second transmission medium. (Sandler, Col. 6 lines 1-29, short message server, download server)

For claim 38, Sandler-Tracton teaches, the data communication system according to claim 37, wherein the additional first computer is a trivial file transfer protocol server first computer or a web server first computer. (Sandler, Col. 4 lines 56-65, internet, email)

For claim 39, Sandler-Tracton teaches, the data communication system according to claim 24, wherein the first computer is a telecommunication system. (Sandler, Col. 4 lines 21-26, message server)

For claim 40, Sandler-Tracton teaches, the data communication system according to claim 24, wherein the software to be updated is a communication-control software. (Sandler, Col. 9 lines 25-50, update)

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For claim 41, Sandler-Tracton teaches, the data communication system according to claim 24, wherein the first computer is part of a first data network and functions as a central first computer for the first data network. (Sandler, Col. 4 lines 22-26, short message server)

For claim 42, Sandler-Tracton teaches, the data communication system according to claim 24, wherein the first data network is connected to a second data network forming an aggregate network and wherein the first computer initiates updating the software stored on a second computer in the second network. (Sandler, Col. 6 lines 1-29, short message server, download server)

For claim 43, Sandler teaches, a first computer in a data communication system, comprising:

a processor; (Sandler, Col. 6 lines 43-60, processor)

a storage device operatively connected to the processor; (Sandler, Col. 7 lines 3-15, memory)

a first data connection operatively connected to a server computer over a transmission medium for exchanging data for updating a first software, the transmission medium ascertained by the computer occurring prior to establishing the first connection; (Sandler, Col. 9 lines 1-10, pstn)

a second software controlling the first software update, the second software exchanged between an administrative computer and the first computer; (Sandler, Col. 6 lines 16-29, download server)

a call identification of the first computer selected from the group consisting of telephone number, internet protocol address, and uniform resource locator address; (Sandler, Col. 5 lines 11-25, network address)

and a time indicator indicating a time to update the first software by the second software. (Sandler, Col. 7 lines 25-47, out of date, Col. 10 lines 46-56, delay time)

Sandler fails to clearly disclose, wherein the ascertaining of the transmission medium comprises a comparison of a respective data rate provided by respective ones of a plurality of transmission media available for updating software, and further comprises selecting the transmission media available for updating software, and further comprises selecting the transmission medium for updating software based on a result of the data rate comparison;

Tracton teaches, wherein the ascertaining of the transmission medium comprises a comparison of a respective data rate provided by respective ones of a plurality of transmission media available for updating software, and further comprises selecting the transmission media available for updating software, and further comprises selecting the transmission medium for updating software based on a result of the data rate

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comparison; (Tracton, Col. 3 line 55-62, available resources, Col. 7 lines 1-10, determination on bandwidth)

Tracton and Sandler are both in the field of connecting to computers

Tracton and Sandler are compatible

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine Sandler and Tracton, because Tracton provides the advantage of providing the fast connection, for faster operation.

For claim 44, Sandler-Tracton teaches, a method for updating software stored on a first computer of a data communication system having an administrative computer and a server first computer, comprising:

indicating a plurality of transmission media available for exchanging data between the first computer and the administrative computer, the indication occurring prior to the updating the software stored on the first computer; (Sandler, Col. 9 lines 1-10, pstn)

and establishing a data connection between the first computer and the additional server first computer over the transmission medium. (Sandler, Col. 6 lines 15-29, download server)

Sandler fails to clearly disclose, comparing a respective data rate provided by respective ones of the plurality of transmission media available for updating software; Selecting one of the plurality of transmission media available for updating software based on a result of the data rate comparing;

Tracton teaches, comparing a respective data rate provided by respective ones of the plurality of transmission media available for updating software; Selecting one of the plurality of transmission media available for updating software based on a result of the data rate comparing; (Tracton, Col. 3 line 55-62, available resources, Col. 7 lines 1-10, determination on bandwidth)

Tracton and Sandler are both in the field of connecting to computers

Tracton and Sandler are compatible

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine Sandler and Tracton, because Tracton provides the advantage of providing the fast connection, for faster operation.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See attached Notice of references cited (if appropriate).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AJAY BHATIA whose telephone number is (571)272-3906. Also any interview requests should be faxed directly to the examiner at (571)-273-3906. The examiner can normally be reached on M, T, H, F 9:00-3:30, Also please fax interview requests to 571-273-3906.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason D Cardone/
Supervisory Patent Examiner, Art Unit 2145